

# The Kansas Dairy Law

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**65-771. Definitions.** As used in this act:

- (a) "Adulterated" has the same meaning as provided in K.S.A. 65-664, and amendments thereto.
- (b) "Dairy manufacturing plants" means any place where dairy products, grade A milk or milk products are manufactured or prepared for sale or distribution, either at wholesale or retail. This term shall not include a licensed food service establishment which is licensed to manufacture homemade ice cream pursuant to this act.
- (c) "Dairy products" means products which may be made from milk or cream for manufacturing purposes and which are not required to meet grade A standards, including butter, cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated milk, whole or skim, condensed whole milk, condensed skim milk, sweetened or plain, frozen dairy dessert, and frozen dairy dessert mixes and such other products as may be otherwise designated by rules and regulations.
- (d) "Frozen dairy dessert" means and includes products containing milk or cream and other ingredients which are frozen or semi-frozen prior to consumption, such as ice cream, ice milk or sherbet, including frozen dairy desserts for special dietary purposes.
- (e) "Frozen dairy dessert mix" means the pasteurized unfrozen combination of all ingredients with or without fruits, fruit juices, candy, nut meats, flavor or harmless color which makes a frozen dairy dessert.
- (f) "Goat milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats. Goat milk sold in retail packages shall contain not less than 2.5 % milkfat and not less than 7.5 % milk solids not fat. Goat milk shall be produced according to the sanitary standards of this act.
- (g) "Grade A pasteurized milk" means pasteurized milk which has at least a 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation. The milk shall meet the requirements for grade A under the rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A pasteurized milk within the statewide system of milk inspection and regulatory services, although such grade A pasteurized milk does not have at least a 90% survey rating.
- (h) "Grade A pasteurized milk products" means all pasteurized milk products which have at least a 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation. The pasteurized milk products shall meet the requirements for grade A under rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A pasteurized milk products within the statewide system of milk inspection and regulatory services, although such grade A pasteurized milk products do not have at least a 90% survey rating.
- (i) "Grade A raw milk for pasteurization" means milk having at least 90% survey rating, as determined by a survey of the source conducted by the secretary pursuant to the survey rating methods for conducting surveys of the status of milk sanitation, the raw milk meeting the requirements for grade A under the rules and regulations adopted pursuant to this act. The secretary may authorize the use of the grade A designation for a temporary time period on grade A raw milk for pasteurization within the statewide system of milk inspection and regulatory services, although such milk does not have at least a 90% survey rating.
- (j) "Imminent health hazard" means any condition which involves milk, milk products, or dairy products, or any practice or procedure in the handling, transportation, storage, processing or manufacturing of a milk, milk product or dairy product which poses a significant threat of danger to the public health which should be corrected immediately to prevent injury or sickness and which should not be permitted to continue while a hearing or other proceeding is being conducted. An imminent health hazard may be

declared at any point in a chain of events which ultimately may result in harm or danger to the public health. The occurrence of the final anticipated injury or other disease related condition shall not be a prerequisite for the establishment of the existence of an imminent health hazard.

(k) "In package form" means any commodity put up or packaged in any manner in advance of sale so as to constitute a unit quantity of the commodity for either wholesale or retail sale, exclusive of any auxiliary container enclosing such packages which individually conform to the requirements of this act.

(l) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in final package form for beverage use shall have been pasteurized or ultrapasteurized, and shall contain not less than 8.25% milk solids not fat and not less than 3.25% milkfat. Milk may have been adjusted by separating part of the milkfat therefrom, or by adding thereto cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Milk may be homogenized. Milk shall be interpreted to include goat milk.

(m) "Milk distributor" means any person who first sells or offers for sale in Kansas any packaged grade A pasteurized milk, milk product, or dairy product.

(n) "Milk hauler/sampler" means any person who collects official samples and may transport raw milk from a farm or raw milk products to or from a milk plant or both, receiving station or transfer station and has in their possession a permit from any state to sample such products.

(o) "Milk inspection and regulatory services" means the inspection, sampling, laboratory testing and the administrative procedures relating thereto, necessary to determine that the production, processing, distribution and sale of grade A milk, milk products, and dairy products comply with the requirements of this act and any rules and regulations adopted hereunder.

(p) "Milk or cream for manufacturing purposes" means raw milk or raw cream which is not subject to grade A standards and which is produced for processing and manufacturing into dairy products for human consumption. Milk for manufacturing purposes may contain less than 3.25% of butterfat and shall be delivered pure, sweet and clean.

(q) "Milk or cream receiving station" means any place where milk or cream may be received, collected, handled, processed, stored or collected and prepared for further transporting.

(r) "Milk or cream transfer station" means any place where milk or cream are transferred directly from one milk tank truck to another.

(s) "Milk processor" means any person who operates any place, premises or establishment where grade A raw milk for pasteurization or milk or cream for manufacturing purposes is processed, pasteurized, bottled or prepared for distribution.

(t) "Milk producer" means any person who owns or operates a dairy farm and who provides, sells or offers for sale grade A raw milk for pasteurization or milk or cream for manufacturing purposes to a milk plant, receiving station or transfer station.

(u) "Milk products" means cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, nonfat skim milk, reduced fat or lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured reduced fat or lowfat milk, cultured nonfat skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified reduced fat or lowfat milk, acidified nonfat skim milk, low-sodium milk, low-sodium reduced fat or lowfat milk, low-sodium nonfat skim milk, lactose-reduced milk, lactose-reduced reduced fat or lowfat milk, lactose-reduced nonfat skim milk, aseptically processed and packaged milk and milk products, milk, reduced fat or lowfat milk or nonfat skim milk with added safe and suitable microbial organisms and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin or mineral fortification of milk products defined herein. Milk products also include those dairy foods made by modifying the federally standardized products listed in this section in accordance with 21 C.F.R. 130.10, requirements for foods named by use of a nutrient content claim and a standardized term. Milk and milk products which have been retort processed after packaging or which have been concentrated, condensed or dried are included in this definition only if they are used as an ingredient to produce any milk or milk product defined herein or if they are labeled as Grade A as adopted and described by rules and regulations promulgated under this act. Except as otherwise provided, the term milk shall not include dietary products, infant formula, ice cream or other desserts, butter or cheese.

(v) "Misbranded" has the same meaning as ascribed to it in K.S.A. 65-665, and amendments thereto.

(w) "On-farm retail sales of milk or milk products" means the sale of milk or milk products on the farm by the producer from the production of the dairy herd to the final consumer, so long as the person making such sales does not promote the sale of milk or milk products to the public in any manner other than by the erection of a sign upon the premises of the dairy farm. The advertisement upon any such sign shall state that such milk or milk products are raw and shall be in letters of a uniform size. Each container in which any unpasteurized milk is sold or offered for sale shall be clearly labeled as ungraded raw milk.

(x) "Pasteurized" has the same meaning as ascribed to it in 21 C.F.R. 131.3 and 135.3.

(y) "Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, association or institution.

(z) "Plant fabricating single service articles" means any place which manufactures single service articles which are expected to come in contact with grade A milk or grade A milk products.

(aa) "Secretary" means the secretary of the Kansas department of agriculture, or the secretary's designee.

(bb) "Single service article or container" means any container having a milk or milk product-contact surface and used in the packaging, handling, storage or servicing of grade A milk and is intended for one usage only.

**65-772. Secretary to adopt rules and regulations.** (a) The secretary shall adopt such rules and regulations as are necessary to implement the provisions of this act, and shall be charged with the enforcement of this act and of any rules and regulations adopted hereunder.

(b) All rules and regulations of the department of agriculture or the secretary of the Kansas department of agriculture concerning milk, cream and dairy products in existence on the effective date of this act shall continue to be effective until revised,

amended, revoked or nullified pursuant to law.

**65-773. Inspection and testing of milk products.** It shall be the duty of the secretary to:

(a) Establish a statewide system of milk inspection and regulatory services to insure, by means of uniform inspection and sampling procedures, that all milk and milk products sold in this state at retail to the final consumer, except on-farm retail sales of milk or milk products, shall attain the standard of grade A pasteurized. The secretary may contract with the governing body of any county or incorporated city, or both, for the provision of milk inspection and regulatory services, and compensation shall be made by the secretary for the furnishing of these services;

(b) inspect or cause to be inspected, as often as may be deemed practicable, all businesses licensed pursuant to this act and any other places where milk, milk products or dairy products are produced, manufactured, kept, handled, stored or sold within the state. The secretary may enter any business licensed under this act during regular business hours or any other hours during which business is in operation or any other place where any milk, milk products or dairy products are manufactured, produced, stored, sold or kept for sale or transportation, for the purpose of performing official duties under this act;

(c) prohibit the production and sale of adulterated or misbranded milk, milk products or dairy products;

(d) seize and condemn for food purposes all unclean, adulterated or misbranded milk, milk products or dairy products wherever such milk, milk products or dairy products may be found; and

(e) take or cause to be taken samples of milk, milk products or dairy products and cause the same to be analyzed or tested according to such methods as shall be prescribed by rules and regulations. Such test or analyses shall conform to methods of the association of official analytical chemists or any other such similar organization as determined by the secretary. Such analyses or tests shall be preserved and recorded as evidence, and the certificate of such test, when sworn to by the analyst, shall be admitted in evidence in all prosecutions that may result under the operation of this act.

**65-774. Powers of secretary.** The secretary may:

(a) Examine any books and records which are kept by any person who is subject to this act and which pertain to any milk, milk products or dairy products or any fees required to be paid pursuant to this act;

(b) examine under oath or otherwise, any person whom the secretary may believe has knowledge concerning the unlawful operation of any business required to be licensed under this act or any place where milk, milk products or dairy products are produced, bought, sold or stored contrary to the provisions of this act;

(c) issue subpoenas requiring the appearance of witnesses and the production of books, papers, reports and records, and to administer oaths under this act;

(d) cooperate with, contract with, and receive funds from any governmental agency; and

(e) enter into reciprocal agreements with other states governing the inspection of milk, milk products and dairy products.

**65-775. Adoption of rules and regulations.** (a) The secretary may adopt rules and regulations:

(1) Establishing criteria for the sanitary production, processing, handling, sampling, examination, testing, grading and labeling of all milk, milk products and dairy products sold or produced in the state of Kansas;

(2) providing criteria for the inspection of dairy farms, dairy manufacturing plants, plants fabricating single service articles, milk or cream transfer stations, milk or cream receiving stations, milk haulers and milk distributors;

(3) establishing sanitation standards and equipment and utensil standards for dairy farms, dairy manufacturing plants, plants fabricating single service articles, transfer stations, receiving stations, milk haulers and milk distributors;

(4) establishing standards of identity for milk, milk products and dairy products. Such standards shall take into consideration corresponding federal standards of identity where such standards exist;

(5) prescribing for any person regulated under this act any bookkeeping or reporting requirements deemed necessary by the secretary, including the maintenance of records and making such records available to the secretary;

(6) regarding bacterial and coliform standards or other quality standards for milk, milk products, or dairy products; and

(7) establishing specifications for apparatus and chemicals and procedures for sampling, testing and weighing milk, cream, butter and any other milk products or dairy products. These specifications, directions and other technical requirements shall conform, insofar as practical, to the official methods of analysis of the association of official analytical chemists or any other such similar organization.

(b) Any rules and regulations promulgated under this act shall conform, insofar as practicable, to the pasteurized milk ordinance, and the policies adopted by the interstate milk shippers conference.

**65-776. Political subdivisions of state prohibited from performing further inspection or assessment of fees.** (a) All milk, milk products and dairy products which have been inspected in accordance with the provisions of this act, and any rules and regulations adopted thereunder, may be moved, distributed or sold, any place in this state, and any further inspection by any political subdivision of this state shall be prohibited. The duly authorized official of any political subdivision of this state may take samples of such products which have been moved into, distributed within or sold within, the boundaries of such political subdivision of this state, for the sole purpose of determining that such products meet the bacterial, butterfat, temperature and coliform standards prescribed in the rules and regulations adopted pursuant to this act. Nothing in this act shall be construed as prohibiting any epidemiological investigations by the proper authorities of any political subdivision.

(b) No political subdivision of this state shall be permitted to fix or impose any license fee, privilege or occupation tax or other charge against the production premises or the product or against any person as a prerequisite for the movement, distribution or sale of any milk, milk product or dairy products within the state or any political subdivisions thereof, and any sampling performed by any political subdivision in accordance with the provisions of subsection (a) or any testing or inspection of milk or milk products by any political subdivision for epidemiological purposes, shall be performed entirely at the expense of such political subdivision.

(c) The secretary or the secretary's authorized representative shall be notified of any sampling being performed by

political subdivisions within the state under the provisions of this section.

**65-777. Secretary may perform tests and assess fees therefor.** (a) The secretary, through the department of agriculture's laboratory, may test any sample of milk, milk product or dairy product for bacteria or somatic cells or perform any other test required by this act or any rules and regulations promulgated under this act.

(b) The secretary is hereby authorized to establish by rules and regulations a schedule of fees for such tests performed by the laboratory which are not performed for regulatory purposes.

**65-778. License requirement for certain persons engaged in milk, cream or dairy business; fees.** (a) Any person who engages in business as a dairy manufacturing plant shall first apply for and obtain a dairy manufacturing plant license from the secretary and shall pay a license fee of \$120, or commencing July 1, 2002, and ending June 30, 2010, a license fee of \$155.

(b) Any person who engages in business as a distributor of milk, milk products or dairy products shall first apply for and obtain a milk distributor license from the secretary and shall pay a license fee of \$120, or commencing July 1, 2002, and ending June 30, 2010, a license fee of \$155. No milk distributor license shall be required for a licensed dairy manufacturing plant which distributes only those products which it manufactures.

(c) Any person who engages in business as a milk hauler shall first apply for and obtain a milk hauler license from the secretary and shall pay a license fee of \$25 or commencing July 1, 2002, and ending June 30, 2010, a license fee of \$35. As part of the application, the secretary may require the applicant to be tested regarding proper procedures for sampling, testing and weighing milk or cream and state laws and rules and regulations.

(d) Any person who operates a milk or cream transfer station or milk or cream receiving station shall first apply for and obtain a milk or cream station license from the secretary and shall pay a license fee of \$50, or commencing July 1, 2002, and ending June 30, 2010, a license fee of \$65.

(e) Any person who engages in business as a manufacturer of single service dairy containers or manufacturer of single service dairy container closures shall first apply for and obtain a single service manufacturing license from the secretary and shall pay a license fee of \$50, or commencing July 1, 2002, and ending June 30, 2010, a license fee of \$65.

(f) The dairy manufacturing plant license, milk distributor license, milk or cream station license and single service manufacturing license shall expire on December 31 of the year for which it was issued unless suspended or revoked by the secretary pursuant to this act. The milk hauler license shall expire on June 30 following the date of issuance unless suspended or revoked by the secretary pursuant to this act.

(g) No license issued under this section shall be transferable. No license shall be renewed if any assessments or fees required under this act are delinquent.

(h) Each applicant for a license shall submit an application on a form supplied by the secretary accompanied by the license fee. All licenses shall be conspicuously displayed in the applicant's place of business.

**65-779. Permit to sell grade A pasteurized milk or milk products.** (a) Any person who is required to pay or remit a fee under this act in order to sell, offer for sale, receive or distribute grade A raw milk for pasteurization, grade A pasteurized milk or grade A pasteurized milk products within this state shall first apply for and obtain a valid permit to do so from the secretary. Such permit shall be issued upon application to the secretary, and no fee shall be charged therefor.

(b) No permit issued under this section shall be transferable. No permit shall be renewed if any assessments or fees required under this act are delinquent.

**65-780. Loss of license; conditions therefor.** The secretary may deny, suspend, revoke or modify or refuse to renew the provisions of any license or permit issued under this act if the secretary finds, after notice and hearing conducted in accordance with the provisions of the Kansas administrative procedure act that the applicant, licensee or permit holder or any agent or employee, thereof has:

(a) Been convicted of or pleaded guilty to a violation of this act or any rules and regulations promulgated thereunder;  
(b) failed to comply with any provision or requirement of this act or any rules and regulations promulgated thereunder;  
(c) interfered with the secretary in the performance of any job duties regarding any inspection or the administration of the provisions of this act;

(d) denied access to premises required to be inspected under the provisions of this act;

(e) failed to pay or remit any required fee or fees, or any part thereof; or

(f) failed to submit a required report, or submitted a false report.

Any such hearing shall be held by the secretary or a presiding officer from the office of administrative hearings.

**65-781. Fees for inspection and regulatory services; when due; delinquent fees.** The following fees for the statewide system of milk inspection and regulatory services are hereby established:

(a) A fee of \$.01, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$.015 for each 100 pounds of milk produced by milk producers under Kansas grade A inspection shall be paid. Each producer is hereby charged with such fee which shall be paid to the milk producers' cooperative, milk processor or milk distributor to whom the milk is sold or delivered. Each cooperative, processor or distributor is hereby charged with the duty of collecting such fees which shall be remitted to the secretary.

(b) A fee of \$.01, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$.015 for each 100 pounds of packaged grade A pasteurized milk or milk products sold in Kansas at retail to the final consumer shall be paid. Each distributor is hereby charged with such fee which shall be remitted to the secretary.

(c) A fee of \$.01, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$.015 per 100 pounds or fraction thereof of grade A raw milk for pasteurization delivered to a milk processor within the state of Kansas which is processed into grade A milk or grade A milk products shall be paid. Each milk processor is hereby charged with such fee which shall be remitted to the

secretary.

(d) A milk fee of \$.01, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$.015 per 100 pounds of milk or cream for manufacturing purposes produced by milk producers under Kansas manufacturing grade milk inspection shall be paid. Each producer is hereby charged with such fee which shall be paid to the milk producers' cooperative, dairy manufacturing plant or any other person to whom the milk or cream for manufacturing purposes is sold or delivered. Each cooperative, dairy manufacturing plant or other person is hereby charged with the duty of collecting such fees which shall be remitted to the secretary.

(e) A fee of \$.0075, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$.01 per 100 pounds of Kansas produced milk or cream for manufacturing purposes or other Kansas produced milk delivered to a dairy manufacturing plant shall be paid on all Kansas milk used in the manufacturing of dairy products. As used in this subsection, the term dairy products shall not include any frozen dairy dessert or frozen dairy dessert mix. Each dairy manufacturing plant shall pay such fee which shall be remitted to the secretary.

(f) In lieu of the fee prescribed in subsection (e), a fee of \$1, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$1.50 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix shall be paid by the manufacturer thereof. Each manufacturer of frozen dairy dessert or frozen dairy dessert mix is hereby charged with such fee which shall be remitted to the secretary. Frozen dairy dessert mix which is further processed into the corresponding frozen dairy dessert by the manufacturer of the frozen dairy dessert mix shall not be subject to the fee required by this subsection.

(g) A fee of \$1, or commencing July 1, 2002, and ending June 30, 2010, a fee of \$1.50 per thousand gallons of frozen dairy dessert or frozen dairy dessert mix imported for retail sale in Kansas shall be paid by the milk distributor who imports these products.

(h) If any fee computed pursuant to subsection (a) through (e) is less than \$2.50, then the sum of \$2.50 shall be paid in lieu of the computed fee. If any fee computed pursuant to subsection (f) or (g) is less than \$7.50, a minimum fee of \$7.50 shall be paid in lieu of the computed fee.

(i) All fees established herein shall be paid to the secretary in the following manner:

(1) The fees established in subsections (a) through (e) shall be remitted on or before the 30th day of each month for the calendar month immediately preceding and shall be accompanied by a report, in the form prescribed by the secretary, indicating the quantities upon which the remittance is based.

(2) The fees established in subsections (f) and (g) shall be remitted on April 30, July 31, October 31 and January 31 for the three calendar months immediately preceding and shall be accompanied by a report, in the form prescribed by the secretary, indicating the quantity of frozen dairy dessert or frozen dairy dessert mix upon which the remittance is based.

(j) Any person who fails to remit all or any part of the required fee or to submit the required report by the date due may be assessed an additional charge equal to 1% of the amount of delinquent fees for each day after the date due, or \$5, whichever amount is greater.

**65-782. Fees deposited in state treasury; dairy fee fund established.** (a) The secretary shall remit all moneys received under this act to the state treasurer at least monthly. Upon receipt of such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the dairy fee fund, which is hereby created, unless otherwise stated.

(b) All expenditures from the dairy fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.

**65-783. Cleanliness of dairy equipment; use of approved water source.** (a) Utensils, milk cans, milking machines, pipeline systems and other equipment used in the handling of milk and dairy products shall be:

(1) Maintained in good condition;

(2) free from rust, open seams, milk stone or any unsanitary condition;

(3) washed, rinsed and drained after each milking and stored in suitable facilities; and

(4) sanitized immediately before use as required by rules and regulations promulgated pursuant to this act.

(b) Any source of water supply used by a dairy farm shall be safe, clean and ample for the cleaning of dairy utensils and equipment as required by rules and regulations promulgated under this act. If the source of water used by a dairy farm is not a public water supply, then the source of water shall be properly constructed in an approved location as required by rules and regulations promulgated under this act. Whenever any source of water supply does not meet the required standards, the water supply shall be deemed unacceptable and the dairy farm or producer shall be removed from production until evidence that necessary corrections have been made is presented to the secretary and the secretary determines that the water supply standards have been met.

**65-784. On-farm production of butter and sales thereof not subject to act.** Nothing in this act pertaining to the manufacture of butter shall apply to farmers or producers of milk and cream when churning milk or cream produced on their own farm into what shall be known as dairy, country or farm butter or to prohibit such producers from making cheese out of milk and cream which are produced on their own farm, when such product is to be used as on-farm retail sales of milk or milk products.

**65-785. Secretary may issue stop sale or stop use order.** (a) The secretary may issue and enforce a written or printed stop sale or stop use order to the owner or custodian of any quantity of milk, milk products or dairy products or any equipment used in the storage, handling, production or packaging of milk, milk products or dairy products which the secretary determines to be in violation of any provisions of this act or any rules or regulations adopted hereunder. The order shall prohibit the further sale, processing, movement, and use of such equipment or product, except on approval of the enforcing officer, until such enforcing officer has evidence that the law and rules and regulations have been complied with and issues a release from the order issued.

(b) No person may sell, use or remove any milk, milk products or dairy products or otherwise violate the terms of any order issued pursuant to subsection (a).

(c) Any order issued pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(d) The provisions of this subsection shall not be construed as limiting the right of the enforcing officer to proceed as authorized by other sections of this act.

**65-786. Secretary may issue emergency cease and desist order.** (a) If the secretary determines after notice and opportunity for a hearing that any person has engaged in or is engaging in any act or practice constituting a violation of any provision of this act or any rules and regulations or order issued thereunder, the secretary may require that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the secretary will carry out the purposes of the violated or potentially violated provision of this act or rules and regulations or order issued thereunder. Any such hearing shall be held by the secretary or a presiding officer from the office of administrative hearings.

(b) If the secretary makes written findings of fact that there is a situation involving an immediate danger to the public health, safety or welfare or that the public interest will be irreparably harmed by delay in issuing an order under subsection (a), the secretary may issue an emergency temporary cease and desist order. Such order, even when not an order within the meaning of K.S.A. 77-502, and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto. Upon the entry of such an order, the secretary shall promptly notify the person subject to the order that:

- (1) It has been entered;
- (2) the reasons therefor; and

(3) that upon written request from the person subject to the order within 15 days after service of the order the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any such hearing shall be held by the secretary or presiding officer from the office of administrative hearings. If no hearing is requested and none is ordered by the secretary, the order will remain in effect until it is modified or vacated by the secretary. If a hearing is requested or ordered the secretary, after giving notice of and opportunity for hearings to the person subject to the order, shall by written findings of fact and conclusions of law vacate, modify or make permanent the order.

**65-787. Court may issue temporary restraining order.** The district courts of the state of Kansas shall have jurisdiction to restrain violations of this act or the rules and regulations promulgated thereunder. The court may issue such orders, including temporary restraining orders, as the facts may warrant without first requiring proof that an adequate remedy at law does not exist. Any orders issued pursuant to this section shall be issued without bond. Proceedings may be instituted under this section without any criminal proceedings, administrative proceedings or civil penalty proceedings being first initiated.

**65-788. Civil penalty may be imposed; how; appeal therefrom.** (a) Any licensee or any employee or agent thereof who violates any provision of this act or any rules and regulations promulgated thereunder, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in the amount fixed by rules and regulations of the secretary in an amount not less than \$100 nor more than \$300 for each violation and, in the case of a continuing violation, every day such violation continues may be deemed a separate violation.

(b) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary to the licensee who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of the licensee to appeal to the secretary. Any such licensee within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(c) Any licensee aggrieved by a final order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(d) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer, deposited in the state treasury and credited to the state general fund.

**65-789. Unlawful acts.** It shall be unlawful for any person to:

- (a) Engage in any business or activity which requires a license or permit under this act without having a license or permit;
- (b) sell, offer or expose for sale:
  - (1) Any milk, milk products or dairy products which do not conform to the definition and standards of identity established under this act; or
  - (2) any milk, milk products or dairy products which are adulterated or misbranded.
- (c) adulterate or misbrand any milk, milk products or dairy products;
- (d) sell, offer for sale or have in such person's possession with the intent to sell at retail to the final consumer any milk or milk product which has not been inspected and designated grade A pasteurized in accordance with the provisions of this act and any rules and regulations adopted thereunder, except that on-farm retail sales of milk or milk products shall be exempt from the provisions of this act unless stated otherwise; or
- (e) violate any provision of this act or any rules or regulations promulgated thereunder.

**65-790. Penalties for violation of act.** Any person who violates any provision of this act or any rules and regulations promulgated thereunder shall be guilty of an unclassified misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$500.

**65-791. Severability of act.** If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not effect other provisions or applications of the act which can be given effect without the invalid provision or

application, and to this end the provisions of this act are severable.

**74-568. State board of agriculture and secretary of the state board of agriculture abolished; transfer of powers and duties to the department of agriculture and secretary of agriculture.** (a) The state board of agriculture created by K.S.A. 74-503, and amendments thereto, and the office of secretary of the state board of agriculture created by K.S.A. 74-503, and amendments thereto, are hereby abolished.

(b) Except as otherwise provided by this act, all of the powers, duties and functions of the existing state board of agriculture and the existing secretary of the state board of agriculture are hereby transferred to and conferred and imposed upon, the department of agriculture and the secretary of agriculture established by this act.

(c) Except as otherwise provided by this act, the department of agriculture and the secretary of agriculture established by this act shall be the successor in every way to the powers, duties and functions of the state board of agriculture and the secretary of agriculture in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the department of agriculture or the secretary of agriculture established by this act shall be deemed to have the same force and effect as if performed by the state board of agriculture or the secretary of the state board of agriculture, respectively, in which such powers, duties and functions were vested prior to the effective date of this act.

(d) Except as otherwise provided by this act, whenever the state board of agriculture, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture established by this act.

(e) Except as otherwise provided by this act, whenever the secretary of the state board of agriculture, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture established by this act.

(f) All rules and regulations of the state board of agriculture or the secretary of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of agriculture established by this act until revised, amended, revoked or nullified pursuant to law.

(g) All rules and regulations of the division of water resources of the state board of agriculture or the chief engineer of the division of water resources of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the chief engineer of the division of water resources of the department of agriculture established by this act until revised, amended, revoked or nullified pursuant to law.

(h) All orders and directives of the state board of agriculture or the secretary of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be orders and directives of the secretary of agriculture established by this act, until revised, amended or nullified pursuant to law.

(i) On the effective date of this act, the secretary of agriculture shall succeed to whatever right, title or interest the state board of agriculture has acquired in any real property in this state, and the secretary shall hold the same for and in the name of the state of Kansas. On and after the effective date of this act, whenever any statute, contract, deed or other document concerns the power or authority of the state board of agriculture or the secretary of the state board of agriculture to acquire, hold or dispose of real property or any interest therein, the secretary of agriculture shall succeed to such power or authority.

(j) The secretary of agriculture established by this act shall be continuations of the state board of agriculture and the secretary of the state board of agriculture.

## **RULES AND REGULATIONS**

### **Article 7. - MILK, CREAM AND DAIRY PRODUCTS**

#### **AGENCY NUMBER 4--KANSAS DEPARTMENT OF AGRICULTURE**

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**4-7-2. Health of herd.** (a) All ungraded raw milk shall be from herds, and additions to herds, that meet the requirements of sec. (D)(1) of "milk for manufacturing purposes and its production and processing," as adopted by reference in K.A.R. 4-7-213.

(b) Milk and cream from cows affected with mastitis or containing any residue from drugs used in the treatment of mastitis shall not be sold.

**4-7-3. Production requirements.** Each business owner or operator and each person subject to the Kansas dairy law shall ensure that the requirements in this regulation are met. (a) Milk barn. The milk barn shall be kept clean, dry, well lighted, well ventilated, and well drained. The floor shall be constructed so that it is easily cleanable. No swine, fowl, or horses shall be permitted in the milk barn.

(b) Milk room. A clean, sanitary, well-constructed building or room that is free from sources of contamination and is properly equipped to wash, sanitize, and store bottles and equipment shall be provided. The building or room shall be constructed in a manner preventing the entrance of dust, dirt, flies, and other pests or contamination. The building or room shall be well lighted and well ventilated.

(c) Utensils. All utensils used in handling milk or cream shall be easily cleanable, free of rust, and in good repair. These utensils shall be made from smooth, nonabsorbent, noncorrodible, nontoxic material. All milk pails shall be of the seamless, hooded type.

(d) Toilet. A sanitary toilet conveniently located and properly constructed shall be provided. The toilet shall be operated and maintained so that all waste is inaccessible to flies and does not pollute the surface soil or contaminate any water supply.

(e) Water supply. The water supply shall be easily accessible, adequate, and compliant with all applicable sanitary and quality standards.

**4-7-4. Handling requirements.** (a) Cooling. All milk shall be cooled to 45° F or less within one hour after milking and shall be maintained at these temperatures until delivery to the consumer.

(b) Containers. All containers shall be stored in a sanitary place and manner and protected from possible contamination. All bottles, cans, and other multiuse containers shall be thoroughly washed and sanitized before each usage.

**4-7-6. Bacterial and coliform count.** (a) Raw milk shall not have a bacterial plate count exceeding 100,000 per milliliter.

(b) Raw cream shall not have a bacterial plate count exceeding 200,000 per milliliter.

**4-7-213. Adoption by reference.** The United States department of agriculture's recommended requirements titled "milk for manufacturing purposes and its production and processing," effective June 17, 2002, are hereby adopted by reference, except for the following: (a) Subpart A;

(b) subpart B, section B2, paragraphs (a), (b), (c), (d), (e), (f), (h), (i), (k), (m), (r), (s), (t), and (u);

(c) subpart D, section D9; and

(d) subpart F.

Copies of the pertinent portions of these requirements may be obtained from the Kansas department of agriculture. (Authorized by K.S.A. 2005 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-773 and 65-775; effective, E-81-24, Aug. 27, 1981; effective May 1, 1981; amended May 1, 1986; amended, T-87-21, Aug. 21, 1986; amended May 1, 1987; amended Jan. 14, 1991; amended Feb. 27, 1998; amended Feb. 11, 2000; amended Dec. 20, 2002; amended Sept. 1, 2006.)

**4-7-214. Additional definitions.** Whenever the following terms are used in the United States department of agriculture's recommended requirements regarding "milk for manufacturing purposes and its production and processing," adopted by reference in K.A.R. 4-7-213, the terms shall have the meanings assigned in this regulation: (a) All references to "the act" or "act" shall mean K.S.A. 65-771 et seq., and amendments thereto.

(b) All references to "Brucellosis test" shall mean any and all requirements of the Kansas department of animal health pertaining to brucellosis.

(c) All references to any "form" shall mean a form supplied by the Kansas secretary of agriculture.

(d) All references made to an "inspector" shall mean the individual who inspects for compliance with the Kansas dairy law.

(e) All references to "official methods" shall mean the "official methods of analysis of AOAC international," adopted by reference in K.A.R. 4-7-716.

(f) All references to "regulatory agency" shall mean the Kansas department of agriculture.

(g) All references to "standard methods" shall mean the edition of "standard methods for the examination of dairy products," adopted by reference in K.A.R. 4-7-716.

(h) All references to equipment, whenever "3-A sanitary standards," "3-A standards," "3-A suggested methods," and "3-A accepted practices" are used, shall mean that the equipment referred to in that context is 3-A sanitary standards-approved before use in producing manufacturing-grade milk.

**4-7-216. Enforcement.** (Authorized by K.S.A. 2001 Supp. 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-785 and 74-568; effective Feb. 11, 2000; amended Dec. 20, 2002; revoked Sept. 1, 2006.)



**4-7-507. Special dietary frozen desserts.** (a) The term “special dietary frozen desserts” shall mean frozen dairy desserts for special dietary purposes that are made in semblance of ice cream or ice milk and that contain sweetening ingredients other than nutritive carbohydrate sweeteners.

(b) Special dietary frozen desserts shall be labeled to meet the requirements of the Kansas food, drug, and cosmetic act, code of federal regulations, title 21.

**4-7-510. Adoption by reference.** Except for 21 C.F.R. 135.160, pertaining to water ices, 21 C.F.R. part 135, revised on April 1, 2005, titled “frozen desserts,” is hereby adopted by reference. Copies of these federal regulations, or pertinent portions of the regulations, may be obtained from the Kansas department of agriculture. (Authorized by K.S.A. 2005 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-775; effective May 1, 1984; amended March 26, 1990; amended Oct. 21, 1991; amended Dec. 20, 2002; amended Sept. 1, 2006.)

**4-7-530. Adoption by reference.** (a) The following sections of 7 C.F.R. part 58, revised on January 1, 2006, are hereby adopted by reference:

- (1) All of section 58.126;
- (2) all of sections 58.132 through 58.138; and
- (3) all of sections 58.605 through 58.654, except sections 58.646, 58.648, and 58.653.

(b) Copies of these federal regulations, or pertinent portions of the regulations, may be obtained from the Kansas department of agriculture. (Authorized by K.S.A. 2005 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-775; effective Oct. 21, 1991; amended Dec. 20, 2002; amended Sept. 1, 2006.)

**4-7-531. Additional definitions.** (a) Notwithstanding any language to the contrary, all references to any “standard of identity” in 7 C.F.R. 58.605, as adopted by reference in K.A.R. 4-7-530, shall mean the corresponding standard of identity established by K.A.R. 4-7-510.

(b) All references to “standard methods for the examination of dairy products” in the regulations adopted by reference in K.A.R. 4-7-530 shall mean the edition of the “standards for examination of dairy products” adopted by reference in K.A.R. 4-7-716.

(c) All references to “official methods of analysis of the association of analytical chemists” in the regulations adopted by reference in K.A.R. 4-7-530 shall mean the edition of the “official methods of analysis of AOAC international” adopted by reference in K.A.R. .

**4-7-532. Examination of frozen dairy desserts and frozen dairy dessert mixes.** (a) A sample of any frozen dairy dessert or frozen dairy dessert mix may be taken by the Kansas secretary of agriculture as often as the secretary deems necessary to prevent the introduction of or to remove any adulterated, misbranded, or unclean frozen dairy desserts or frozen dairy dessert mixes from the marketplace.

(b) Samples shall be taken at least annually at each business or location owned or operated by any person required to obtain a license to operate a dairy manufacturing plant.

**4-7-533. Coliform and bacteria standards for frozen dairy desserts and frozen dairy dessert mixes.** (a) A frozen dairy dessert product shall not contain more than 50,000 bacteria per gram as determined by the standard plate count and shall not contain more than 10 coliform organisms per gram in three out of the last five samples.

(b) A frozen dairy dessert mix shall not contain more than 20,000 bacteria per gram as determined by the standard plate count and shall not contain more than 10 coliform organisms per gram in three out of the last five samples.

**4-7-715. Enforcement.** K.A.R. 4-7-715 through K.A.R. 4-7-722 shall be enforced by the Kansas secretary of agriculture in accordance with the corresponding provisions contained in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716, a copy of which shall be on file in the office of the Kansas secretary of agriculture.

**4-7-716. Adoption by reference.** (a) The following documents are hereby adopted by reference:

(1) Except for sections 1 (II), 2, 9, 15, 16, 17, and 18, the “grade ‘A’ pasteurized milk ordinance,” 2005 revision, including appendices, as published by the U.S. department of health and human services, public health service, and food and drug administration;

(2) the “methods of making sanitation ratings of milk shippers,” including appendices, published by the U.S. department of health and human services, public health service, and food and drug administration, 2005 revision;

(3) the 2005 revision of the “procedures governing the cooperative state-public health service/food and drug administration program of the national conference on interstate milk shipments,” including pages 43 through 63;

(4) the 17th edition of the “standard methods for the examination of dairy products,” dated 2004 and published by the American public health association;

(5) the 17th edition of the “official methods of analysis of AOAC international,” volumes I and II, revision 1, including appendices, dated 2002 and published by the association of official analytical chemists; and

(6) the 2003 revision of the “evaluation of milk laboratories,” published by the U.S. department of health and human services, public health service, and food and drug administration.

(b) Copies of the pertinent portions of the material adopted by reference shall be available from the Kansas department of agriculture.

(c) Each citation in the materials adopted by reference in this regulation shall refer to the publication in effect on April 3, 2006. (Authorized by K.S.A. 2005 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-775; effective May 1, 1980; amended May 1, 1983; amended May 1, 1986; amended Dec. 26, 1988; amended Jan. 14, 1991; amended Oct. 21,

1991; amended July 1, 1992; amended Aug. 22, 1994; amended Dec. 20, 2002; amended Sept. 1, 2006.)

**4-7-717. Additional definitions.** (a) All references to "this ordinance" in the "grade 'A' pasteurized milk ordinance" adopted by reference in K.A.R. 4-7-716 shall mean K.A.R. 4-7-716.

(b) All references to "regulatory agency" in the "grade 'A' pasteurized milk ordinance" adopted by reference in K.A.R. 4-7-716 shall mean the department.

(c) All references to "jurisdiction" in the "grade 'A' pasteurized milk ordinance" adopted by reference in K.A.R. 4-7-716 shall mean the state of Kansas.

(d) "Cottage cheese" means the product defined in 21 C.F.R. 133.128 as revised on April 1, 2005 and hereby adopted by reference. Grading of this product shall be optional.

(e) "Dry curd cottage cheese" means the product defined in 21 C.F.R. 133.129 as revised on April 1, 2005 and hereby adopted by reference. Grading of this product shall be optional.

(f) All references to the "standard methods for the examination of dairy products of the American public health association" in the "grade 'A' pasteurized milk ordinance" adopted by reference in K.A.R. 4-7-716 shall mean the publication adopted by reference in K.A.R. 4-7-716(a)(4).

(g) All references to the "official method of analysis of AOAC international" in the "grade 'A' pasteurized milk ordinance" adopted by reference in K.A.R. 4-7-716 shall mean the publication adopted by reference in K.A.R. 4-7-716(a)(5).

(h) Whenever reference is made in the "grade 'A' pasteurized milk ordinance," as adopted by reference in K.A.R. 4-7-716, to the requirements or responsibilities of a "vendor," the reference shall obligate the processor of milk. (Authorized by and implementing K.S.A. 2005 Supp. 65-772 and K.S.A. 65-775; effective May 1, 1980; amended Jan. 14, 1991; amended Oct. 21, 1991; amended Dec. 20, 2002; amended Sept. 1, 2006.)

**4-7-718. Insertions.** Each reference to the proper legal jurisdiction in the "grade 'A' pasteurized milk ordinance" adopted by reference in K.A.R. 4-7-716 shall be completed by insertion of the word "Kansas" or the phrase "state of Kansas," whichever the context requires.

**4-7-719. Additions.** (a) In item 10p appearing in section 7 of the "grade 'A' pasteurized milk ordinance" adopted by reference in K.A.R. 4-7-716, the following language shall be inserted after the last sentence in the first paragraph: "However, cottage cheese, cheese dressings, or cheese ingredients may be transported by other methods which protect the product from contamination."

(b) In item 18p appearing in section 7 of the "grade 'A' pasteurized milk ordinance" adopted by reference in K.A.R. 4-7-716, the following language shall be inserted after the last sentence in the first paragraph: "However, cottage cheese, dry curd cottage cheese, and reduced-fat or low-fat cottage cheese may be transported in sealed containers in a protected sanitary manner from one plant to another for creaming or packaging."

**4-7-804. Schedule of fees for non-regulatory laboratory work.** (a) Each person for whom a test is performed by the dairy laboratory of the Kansas department of agriculture for non-regulatory purposes shall pay the department \$5.00 for each of the following tests:

- (1) Standard plate count for raw or pasteurized milk or milk products;
- (2) coliform plate count with confirmation for raw or pasteurized milk or milk products;
- (3) direct microscopic somatic cell count for raw milk products;
- (4) B-lactam analysis with confirmation for raw and pasteurized milk or milk products;
- (5) dairy water coliform bacteria and heterotrophic plate count;
- (6) empty container sterility analysis;
- (7) thermometer calibration at two temperature points;
- (8) added water analysis in raw milk; and
- (9) butterfat analysis for raw or retail milk or milk products.

(b) Each person for whom a test is performed by the dairy laboratory of the Kansas department of agriculture for non-regulatory purposes shall pay the department \$10.00 for each of the following tests:

- (1) Electronic somatic cell count;
- (2) inhibitor analysis other than a B-lactam analysis; and
- (3) aflatoxin analysis.

(c) Any non-regulatory laboratory test may be refused to be performed by the secretary, at the secretary's discretion.

**4-7-900. Civil penalty; complaint.** A document titled a "complaint" shall initiate a proceeding for the assessment of a civil penalty. The complaint shall include the following:

(a) A general statement citing the section of the act authorizing the assessment of a civil penalty;

(b) a specific reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;

(c) a concise statement of the factual basis for each alleged violation;

(d) the amount of the civil penalty that is proposed to be assessed;

(e) notice of the respondent's right to request a prehearing conference; and

(f) notice of the respondent's right to request a hearing on any material fact contained in the complaint or on the appropriateness of the amount of the proposed civil penalty.

**4-7-901. Answer to the complaint.** (a) A party responding to a complaint may file a written answer. The answer shall clearly and directly admit or deny each of the factual allegations contained in the complaint. If the respondent has no knowledge of a particular

factual allegation and states this, the allegation shall be deemed denied. The answer shall also state any facts or arguments that are alleged to constitute a defense and any facts that the respondent disputes and intends to place at issue.

(b) The respondent may request a prehearing conference before the presiding officer, before the actual hearing. The presiding officer may require the parties to exchange evidence or brief the legal issues. The presiding officer may impose other procedural requirements in conjunction with a prehearing conference.

**4-7-902. Amount of proposed civil penalty.** (a) A separate civil penalty shall be assessed for each violation of article 7 of chapter 65 of the Kansas statutes annotated, and amendments thereto, that results from each independent act or failure to act by any dairy manufacturing plant or agent or employee of the plant or agent. In determining whether a given violation is independent of and substantially distinguishable from any other violation for the purpose of assessing separate civil penalties, consideration shall be given to whether each violation requires an element of proof not required by another violation. If several violations require the same elements of proof and are not distinguishable, assessment of separate civil penalties shall be within the discretion of the secretary or the secretary's authorized representative.

(b) A penalty of up to \$300 may be assessed by the secretary if a violation ultimately could result in harm or danger to the public health or is a repeat violation identified in subsection (c) of this regulation.

(c) For the second occurrence and for each subsequent occurrence of a violation for which a civil penalty has been assessed within a three-year period, the civil penalty assessed shall be the maximum amount allowed by law.

**4-7-903. Criteria to determine dollar amount of proposed civil penalty.** In determining the amount of any proposed civil penalty, the gravity of the violation shall be considered by the secretary or the secretary's designee. Factors to be considered may include the following:

- (a) The potential of the act to injure or endanger the health of any consumer, or the general public;
- (b) the severity of actual or potential injuries;
- (c) the respondent's history of compliance with K.S.A. 65-789, amendments thereto, and the regulations adopted thereunder;
- (d) any action taken by the respondent to remedy the specific violation or to mitigate any adverse health effects or environmental effects that were the result of the violation; and
- (e) any misrepresentation or fraud associated with the violation.

**4-7-904. Informal settlement.** (a) The respondent may request a settlement conference at any time during an administrative proceeding.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary in the form of a consent order.

**4-7-1000. Milk hauler license.** (a) Each milk hauler shall sample, weigh, handle, and transport milk or cream samples in accordance with the "standard methods for examination of dairy products," the "official methods of analysis of AOAC international," the provisions of the "grade 'A' pasteurized milk ordinance" adopted by reference in K.A.R. 4-7-716.

(b) Before the initial issuance of the milk hauler license, each applicant shall pass a written examination on the proper procedures for sampling, testing, and weighing milk or cream, and on the state laws and regulations pertaining to milk and dairy products.

(c) Each milk hauler license shall be renewed when the applicant pays the required fees and attends renewal training provided by the secretary at least once during any three consecutive licensing periods.